such alacrity to return, when the submarine took herself off and left them free from that menace. They thought the ship was sinking when they lost sight of her, but that is a common expectation when the crew abandon a ship. They afterwards inferred that she had sunk. It is plain that they had no intention of returning when they got to Aberdeen, and the master telegraphed to the owners that she had been sunk by a submarine. As the conduct of the master and crew after the departure of the submarine, which was emphasized by Lord Sumner, as well as by Pickford, L. J., is not considered by the majority of the lords, the case is left in rather an unsatisfactory state. J. L. THORNDIKE.

RIGHT TO STRIKE IN WAR TIME. — The effect of a national emergency, such as the war with Germany, on the administration of justice is perhaps most strongly felt in courts of equity, for here there is more room for the exercise of the court's discretion, and hence more opportunity than in courts of law for the influence of considerations of public welfare and even public opinion. A decree was recently issued by the Supreme Court of New York which decided a controversy between individuals largely on the basis of national needs arising out of the war.[1] The plaintiff corporation was a shoe manufacturer. Eighty per cent of its output was military equipment for the United States government. It sought an injunction against officers, members, and agents of a labor union who were instigating a strike in the plaintiff's factory. The strike was accompanied by violence, assaults, and mass picketing. The court issued a permanent injunction against the acts of violence, and also enjoined all strikes "for any cause whatever" for the duration of the war.

The acts of violence enjoined were, on the evidence, clearly unlawful, and it is not proposed to discuss that part of the decree. The remainder of the decree, against all strikes for any cause whatever, was based by the court on the contentions that "the principles announced in cases which arose before the war cannot be applied to the relation between workers and employers in war industries in so far as they conflict with the principles and policies of the United States government in the conduct of the war"; that the respective rights and relations of the parties "were modified and controlled by their obligations and duties to the United States government"; and that a labor union has no right "to induce or incite workmen in such industries to strike and not to work, and thereby jeopardize the successful outcome of our country's military operations, . . . even though to do so would have been lawful in times of peace."

It is fundamental that a court of equity protects individual interests only and not the interests of the state as such. It will, it is true, prevent public nuisances and purprestures upon public rights and property, but this jurisdiction of equity deals with the state as a property owner rather than as a sovereign.[2] Equity has, however, no jurisdiction to enjoin crimes.[3] It is therefore quite beside the point in the principal case that

[1] Rosenwasser Brothers *v.* Pepper, 172 N. Y. Supp. 310 (1918).

[2] *In re* Debs, 158 U. S. 564 (1895). See 2 STORY, EQUITY JURISPRUDENCE, 14 ed., § 1248 *et seq.*; 4 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 1349.

[3] Cope *v.* District Fair Ass'n, 99 Ill. 489 (1881). See 4 POMEROY, § 1347, note.

a strike by workers in a war industry is a wrong to the state, in that it interferes with the successful conduct of the war. If it is a wrong to the state it may be that a criminal court will punish it, or that the proper executive authorities will prevent it, but a court of equity cannot enjoin it as such, either at the suit of the individual or the state. With the exception above noted equity will enjoin wrongs to individuals only. Therefore, in order to invoke the aid of equity it must be shown that the injury is a tort at law.

The court in the principal case declared it to be the established law of New York that "a labor union may induce or persuade the employees of a manufactory or other business, which is conducted by the owners thereof as an open or a nonunion shop, to become members of the union, and to strike in order to compel the owner to conduct his factory or business as a union shop." [4] The point at which strikes or the inducing of strikes becomes unlawful is unimportant here; it suffices that these acts may be lawful.

The legality of strikes, which are intentional injuries to the employer and hence *prima facie* actionable, is a result of the balancing of the social interests in favor of and against this method of settling industrial questions.[5] The question raised by the principal case is whether a sudden increase in the national need for the product of an industry, caused by an emergency such as the war, is a social interest sufficiently powerful to make otherwise lawful strikes unlawful. It would seem that it is not. In the event of a national emergency it is the function of the legislature and the executive, not the judiciary, to determine what modifications in normal rights and relations are necessary to meet the exigencies of the situation. Thus it is for the legislature or the executive to decide whether the right to strike of employees in war industries is to remain the same as before the war, whether a patriotic appeal is to be made to workers not to strike, or whether strikes are to be forbidden.[6] For a court to enjoin all strikes against an employer for the duration of the war on the ground of national needs is to assume a jurisdiction to decided questions of political policy far beyond the constitutional power of the court. It is no more within the jurisdiction of the court to decide that war has changed the legal right of a worker to strike than that it has changed the legal right of an idler not to work. There may be a social interest in the successful conduct of the war, but there is no social interest in the pursuit of a definite war policy sufficiently strong to make unlawful an act otherwise lawful, when that policy has not been adopted by the proper governmental authorities.[7] Certainly no court has the power to declare

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[4] The court cited Bossert *v.* Dhuy, 221 N. Y. 342, 117 N. E. 582 (1917); National Protective Ass'n *v.* Cumming, 170 N. Y. 315, 63 N. E. 369 (1902); Auburn Draying Co. *v.* Wardell, 178 App. Div. 270, 274, 165 N. Y. Supp. 469 (1917).

[5] See a note, "Boycotts on Materials," 31 HARV. L. REV. 482. See, also, the introductory paragraphs of an article by Dean Roscoe Pound, "Interests of Personality," 28 HARV. L. REV. 343.

[6] The validity of such a regulation, and even more the validity of the injunction in the principal case, would depend on its not being contrary to the Thirteenth Amendment. See Blewett Lee, "Thirteenth Amendment and the General Railway Strike," 4 VIRGINIA L. REV. 437.

[7] The only indication of the policy of the United States government on this question, cited by the court, is a pamphlet issued by the National War Labor Board, con-

such an act a wrong to the state, to say nothing of taking the further step and declaring it a tort.

Admittedly there is a social interest in the unhampered production of wealth, this interest being stronger when there is a great national need for the product in question. It is also true that such considerations of public interest will often induce equity to act where it would otherwise not act. Thus specific performance of contracts involving continuous performance and supervision of the most difficult sort has been decreed because there was a strong public policy in favor of having the contract carried out.[8] Equity has also enjoined an illegal quitting of work by railroad employees because they were in the public service.[9] It must never be lost sight of, however, that in these cases it was a legal right of the plaintiff which was enforced, and that the public interest involved went merely to the exercise of the court's discretion in granting the extraordinary remedies of equity. In the principal case there was no legal right in the plaintiff to have his employees refrain from striking during the war. It follows that an injunction should not have issued.[10]

RESTRAINT OF PRINCES. — The "restraint-of-princes" clause, of ancient origin,[1] has since the beginning of the war been the subject of

taining recommendations as to the "Principles and Policies to Govern Relations between Workers and Employers for the Duration of the War." The pamphlet stated that "there should be no strikes and lockouts during the war." The court cited this as a "declaration by the United States Government of the principles which govern it in dealing with labor disputes in war industries." In so far as it is a declaration by the government it would seem to indicate that the government intended to limit itself to such an appeal and not to resort to compulsion to secure continuity of work in war industries. It is not for the court to alter this policy.

[8] Union Pacific Ry. Co. *v.* Chicago, Rock Island & Pacific Ry. Co., 163 U. S. 564 (1896); Joy *v.* United States, 138 U. S. 1 (1891); Edison Illuminating Co. *v.* Eastern Pennsylvania Power Co., 253 Pa. 457, 98 Atl. 652 (1916); Schmidtz *v.* Railroad Co., 101 Ky. 441 (1897). In Conger *v.* Railroad Co., 120 N. Y. 29, 23 N. E. 983 (1890), specific performance of a contract was denied because of the public interest in non-performance.

[9] Toledo, etc. Ry. Co. *v.* Pennsylvania Co., 54 Fed. 746 (1893).

[10] A recent case in New Jersey, Driver *v.* Smith, 104 Atl. 717 (1918), presents the reverse of the situation in the principal case, specific performance of a contract which interfered with war work being denied. In that case the defendant, an essential employee in a war industry, had contracted to leave his position and to work for the plaintiff. Upon his refusal to do so the plaintiff sought to enjoin breach of the negative side of the contract, not to work for anyone but the plaintiff. The court denied the injunction, on the ground that the evidence showed that the plaintiff had made this contract solely to injure the defendant's employer, and that he had no legitimate interest in its enforcement.

The court expressly denied that it would refuse relief merely because the defendant was essential to war work, saying in the course of the opinion: "It would be an intolerable situation if each court before whom the rights of individuals were litigated were permitted to determine whether relief should be granted or withheld upon its opinion as to whether the granting or withholding of its relief would aid or injure the government in its war activities. . . ."

[1] The origin of the clause, although obscure, was probably continental. See EMERIGON, INSURANCE, c. 12, § 30 (Meredith's ed.), 420, and the citations of other continental writers in 1 PHILLIPS, INSURANCE, 5 ed., par. 1115. See, also, 1 PARSONS, MARINE INSURANCE, 575 *et seq.* *Cf.* the limited definition in 1 CALVO, DICTIONNAIRE DE DROIT INTERNATIONAL, 61, tit., "Arrêt de Prince."